

In Re:

Stevens Worldwide Van Lines, Inc.

Claimant

DATE: November 5, 1996

Claims Case No. 96070216

CLAIMS APPEALS BOARD DECISION

DIGEST

The erroneous use of a copy of a Joint Statement of Loss or Damage at Delivery (DD Form 1840), instead of a Notice of Loss or Damage (DD Form 1840R), to notify the carrier of loss or damage discovered after delivery does not invalidate a service member's prima facie claim of liability against a carrier if the notice otherwise is timely and adequate to alert the carrier of the need to investigate for possible loss/damage on the shipment.

DECISION

Stevens Worldwide Van Lines, Inc. (Stevens), appeals the U.S. General Accounting Office's (GAO) Settlement Certificate Z-1348910 (113), dated July 7, 1995, which denied Stevens' claim for reimbursement of \$341 deducted by the Army for transit loss and damage to the household goods shipment of a service member.⁽¹⁾ Pursuant to Public Law No. 104-53, November 19, 1995, effective June 30, 1996, the authority of the GAO to adjudicate carriers' reclaims of amounts deducted by the Services for transit loss/damage was transferred to the Director, Office of Management and Budget who delegated this authority to the Department of Defense (DoD). We affirm GAO's settlement and disallow further recovery by Stevens.

Background

The record indicates that Stevens picked up the service member's household goods from a non-temporary storage contractor in Georgia on December 2, 1991, and delivered them to the service member in West Virginia on January 23, 1992. Stevens contends that no loss or damage was reported on the Joint Statement of Loss or Damage at Delivery (DD Form 1840) on the day of delivery. Stevens acknowledges that it was notified of damage on the Notice of Loss or Damage (DD Form 1840R) dispatched on March 23, 1992, and received by it on April 6, 1992.⁽²⁾ Stevens also contends that it received the altered DD Form 1840 on April 4, 1992, and that the altered form indicated, among other things, that a continuation sheet was used for the DD Form 1840. There were nine items listed on the DD Form 1840R: items 9, 40, 56 (bicycle), 88, 60, 84 (originally item "78" which was crossed through), 36, 19, and 94, and seven items listed on the DD Form 1840: items 41, 56 (washer), 89, 21, 38, 37 and 35.

Stevens has accepted \$186 of liability, but denies liability for eight items listed on either the DD Form 1840 or DD Form 1840R, totaling \$341, contained in the member's claim against the carrier.⁽³⁾ The items for which Stevens denies liability are: 84, 41, 56 (washer), 89, 21, 38, 37 and 35, i.e., the items listed on the DD Form 1840 plus item 84 (originally listed as "78").

The Army believes that the DD Form 1840 is valid on its face, and that the items listed thereon were reported as missing or damaged on the day of delivery. The Army's alternative position is that even if no loss or damage was reported at delivery, and the member mistakenly used the backside of the DD Form 1840R, i.e., the DD Form 1840, to report additional loss or damage at a later date, the carrier still received adequate notice of the additional loss or damage because it was reported on the backside of the DD Form 1840R which was timely dispatched to the carrier. Stevens impeaches the Army's alternative position by noting that the DD Form 1840R had 14 spaces to list lost or damaged items and that only nine spaces were used. Stevens suggests that if all 15 items involved in the claim were listed in the

notice dispatched on March 23, 1992, then the member would have listed the first 14 on the DD Form 1840R side, then turned the form over and added a 15th item on the DD Form 1840 side.

Discussion

Generally, under federal law, in an action to recover from a carrier for damage to a shipment, the shipper establishes his prima facie case when he shows delivery in good condition, failure to deliver or arrival in damaged condition, and the amount of damages. Thereupon, the burden of proof is upon the carrier to show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving the carrier of liability. See Missouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964). Under the Military-Industry memorandum of Understanding (Loss and Damage Rules), when loss or damage is not reported at delivery, a notice of later discovered loss or damage (usually the DD Form 1840R) dispatched to the carrier not later than 75 days following delivery shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt. The issue here is whether there was timely and adequate notice of loss or damage.

For purposes of this claim we will assume, without deciding, that no loss or damage was reported on the DD Form 1840 on the day of delivery. While we are unable to reconcile all of the apparent conflicting facts involved, we believe that there is a proper basis for supporting the Army's position that notice of additional loss or damage was adequate even if it was listed incorrectly on a copy of the DD Form 1840 instead of the DD Form 1840R. Stevens admits it received both the DD Form 1840R and the altered DD Form 1840 within 75 days of delivery. The requirement is that notice has to be dispatched to the carrier within 75 days of delivery. Also, each form referred to the member's name and the Personal Property Government Bill of Lading number of the shipment, and in total, to all items claimed. The Comptroller General has held that a DD Form 1840, although used mistakenly to report loss or damage discovered after delivery, may still be adequate notice. See American International Moving, Corp., B-247576, Sept. 2, 1992.

Conclusion

We affirm GAO's settlement.

\s\ Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

\s\ Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board

\s\ Christine M. Kopocis

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1. See Army Claim No. 92-311-2537, and carrier file 91-72297, involving a shipment under Personal Property Government Bill of Lading (PPGBL) GP-435,349.

2. The DD Form 1840R is the reverse side of the DD Form 1840. The DD Form 1840 is used for the property owner and the carrier's representative to jointly report loss or damage on the day of delivery, while the DD Form 1840R is used to notify the carrier of additional damage when dispatched within 75 days of delivery.

3. See Demand on Carrier (DD Form 1843) and the List of Property and Claims Analysis Chart (DD Form 1844). The member's claim against the carrier involved items 41, 56, 89, 21, 38, 37, 35, 40, 56, 88, 60, 84, 36, 19 and 94.